



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2014-0082]

RIN 1625-AA00

Safety Zones; Cleveland Dragon Boat Festival and Head of the Cuyahoga, Cuyahoga River, Cleveland, OH

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

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SUMMARY: The Coast Guard is establishing regulations for annual, combined marine events that require the establishment of a temporary safety zone within the Captain of the Port Zone Buffalo on the Cuyahoga River, Cleveland, OH. This safety zone regulation is necessary to protect the surrounding public, spectators, participants, and vessels from the hazards associated with the rowing regatta in the narrow waterway of the Cuyahoga River. This rule is intended to restrict vessels annually from a portion of the Cuyahoga River for up to 9 hours during the combined Dragon Boat Festival and the Head of the Cuyahoga Regatta.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG-2014-0082]. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail LT Stephanie Pitts, Chief of Waterways Management, U.S. Coast Guard Marine Safety Unit Cleveland; telephone 216-937-0128, e-mail Stephanie.m.pitts@uscg.mil. If you have questions on viewing the docket, call Ms. Cheryl Collins, Program Manager, Docket Operations, telephone 202-366-9826 or 1-800-647-5527.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS                      Department of Homeland Security

#### A. Regulatory History and Information

The Head of the Cuyahoga (HOTC) rowing regatta has occurred annually for over a decade and the Dragon Boat Festival for the last 8 years. In response to past years' events, the Coast Guard established a temporary safety zone to protect the boating public. For example, in 2013, the Captain of the Port Buffalo initiated a rulemaking (78 FR 42736, July 17, 2013) to ensure the safety of spectators and vessels during the rowing event. The safety zone in this final rule is identical in size, location, and effect as that established by the 2013 rulemaking.

#### B. Basis and Purpose

As mentioned in the "Regulatory History and Information" section, the HOTC is an annual rowing regatta that has taken place for over a decade. The HOTC takes place on the Cuyahoga River along a 4800 meter course and attracts numerous rowing clubs and programs from across the U.S. Typically, the event occurs on the third Saturday of September between the hours of 7 a.m. and 4 p.m. In 2014, the HOTC occurred between 6 a.m. and 4 p.m. on September 20th.

In conjunction with the HOTC, the Seventh Annual

Cleveland Dragon Boat Festival will take place from Superior/Nautica Bend to just north of the Detroit Superior Viaduct Bridge. The Dragon Boat festival will feature three head-to-head races being held over the course of the day.

The Captain of the Port Buffalo has determined that the HOTC and the Cleveland Dragon Boat Festival rowing events present significant hazards to public spectators and participants.

#### C. Discussion of Comments, Changes and the Final Rule

We received one comment on the NPRM (79 FR 24656). This comment requested the time of enforcement be changed from 10 hours to 9 hours and to begin at 7 a.m. in lieu of the proposed 6 a.m. and still end at 4 p.m. as originally proposed. This change was requested for the better facilitation of trade on the Cuyahoga River. Of note, the commenter, Great Lakes Carriers Association noted that they completed a memorandum of agreement with the Cuyahoga River rowing foundation to address this very issue and to formalize the agreement between them to better allow for diverse use of the river without hampering trade and vital to the local economy. The Coast Guard, upon reviewing the comment considers the change to the proposal to be in the best interest of this rule and has amended the final rule

to be effective for 9 hours, beginning at 7 a.m. and ending at 4 p.m. as requested.

The enforcement date and times for the safety zone that is listed in 33 CFR165.T09-0082 is to occur on the 3rd Saturday of September of each year and to begin 7 a.m. and end at 4 p.m. For any given year, the Captain of the Port Sector Buffalo will provide notice to the public by publishing a Notice of Enforcement in the *Federal Register*, as well as, issuing a Broadcast Notice to Mariners.

Entry into, transiting, or anchoring within the safety zones identified in §165.T09-0082 will be prohibited unless authorized by the Captain of the Port Buffalo or his on-scene representative. The Captain of the Port or his on-scene representative may be contacted via VHF Channel 16.

#### D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes or executive orders.

##### 1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not

require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

## 2. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered the impact of this rule on small entities. The Coast Guard received no comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule would affect the following entities, some of which might be small entities: the owners and operators of vessels intending to transit or anchor in the safety zone while the zone is being enforced. The safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: each safety zone in this rule will be in enforced for no more than 9 hours in any 24 hour period and enforced only once per year and will be in areas with low commercial vessel traffic. Furthermore, this safety zone has been designed to mitigate the delay to traffic by shortening the enforcement period. In the event that a safety zone affects shipping,

commercial vessels may request permission from the Captain of the Port Buffalo or his or her designated representative to transit the safety zone or remain in the safety zone during the event.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

### 3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each

agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### 4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### 5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

#### 6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of



people, places or vessels.

#### 7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### 8. Taking of Private Property

This rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### 9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### 10. Protection of Children from Environmental Health Risks

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

#### 11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

#### 12. Energy Effects

This rule is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

#### 13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### 14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2-1, paragraph (34) (g), of the Commandant Instruction because it involves the establishment of a safety zone.

An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR parts 165 as follows:

PART 165- REGULATED NAVIGATION AREAS AND LIMITED ACCESS

## AREAS

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T09-0082 to read as follows:

§ 165.T09-0082 Safety Zone; Cleveland Dragon Boat Festival and Head of the Cuyahoga, Cuyahoga River, Cleveland, OH.

(a) Location. The following area is a safety zone: all waters of the Cuyahoga River, Cleveland, OH between a line drawn perpendicular to the river banks from position 41° 29'55" N, 081°42'23" W (NAD 83) just past the Detroit-Superior Viaduct bridge at MM 1.42 of the Cuyahoga River south to a line drawn perpendicular to the river banks at position 41° 28'32" N, 081°40'16" W (NAD 83) just south of the Interstate 490 bridge at MM 4.79 of the Cuyahoga River.

(b) Enforcement period. The third Saturday of September each year from 7 a.m. to 4 p.m.

(c) Definitions. The following definitions apply to this section:

(1) "On-scene Representative" means any Coast Guard commissioned, warrant, or petty officer designated by the Captain of the Port Buffalo to monitor a safety zone, permit entry into the zone, give legally enforceable orders

to persons or vessels within the zones, and take other actions authorized by the Captain of the Port.

(2) "Public vessel" means vessels owned, chartered, or operated by the United States, or by a State or political subdivision thereof.

(d) Regulations. (1) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring within this safety zone identified in paragraph (a) of this section is prohibited unless authorized by the Captain of the Port Buffalo or his designated on-scene representative.

(2) The safety zone identified in paragraph (a) of this section is closed to all vessel traffic, except as may be permitted by the Captain of the Port Buffalo or his designated on-scene representative.

(3) Vessel operators desiring to enter or operate within the safety zone must contact the Captain of the Port Buffalo or his on-scene representative to obtain permission to do so. The Captain of the Port Buffalo or his on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Buffalo, or his on-scene

representative.

(4) Additionally, all vessels over 65 feet intending to transit, moor or conduct operations to include loading or discharging of cargo or passengers in the Cuyahoga River while the safety zone is being enforced should request permission from the COTP or his/her designated representative at least 12 hours before the zone is established.

(e) Exemption. Public vessels, as defined in paragraph (c) of this section, are exempt from the requirements in this section.

(f) Waiver. For any vessel, the Captain of the Port Buffalo or his designated representative may waive any of the requirements of this section, upon finding that operational conditions or other circumstances are such that application of this section is unnecessary or impractical for the purposes of public or environmental safety.

Dated: August 7, 2015

B. W. ROCHE,  
Captain, U. S. Coast Guard,  
Captain of the Port Buffalo

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Date: 8/27/2015]